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	Group Art Unit	2612	
	Examiner Name	Shirley Lu	
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PATENT
Attorney Docket No. 043978-027000

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:)	Confirmation No.: 7832
Steven O. MARKEL)	Group Art Unit: 2612
Serial No. 09/934,354)	Examiner: Shirley Lu
Filed: August 20, 2001)	
For: DETECTION AND RECOGNITION OF DATA)	
RECEIVER TO FACILITATE PROPER)	
TRANSMISSION OF ENHANCED DATA)	

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APPEAL BRIEF

As set forth in the Notice of Appeal filed November 13, 2006, Appellants hereby appeal the Examiner's final rejection of claims 1-10 and 15-20 of the above-identified application. Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the final rejection of these claims.

TABLE OF CONTENTS

	<u>Page No.</u>
I. Real Party in Interest	3
II. Related Appeals and Interferences	3
III. Status of Claims	3
IV. Status of Amendments	3
V. Summary of Claimed Subject Matter	3
VI. Grounds of Rejection	5
VII. Argument	5
VIII. Claims Appendix	13
IX. Evidence Appendix	16
X. Related Proceedings Appendix	17

I. REAL PARTY IN INTEREST

OpenTv, Inc., the assignee of record, is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

At present, there are no related appeals or interferences known to the Appellant, the Appellant's representative or the assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-20 have been finally rejected, and claims 1-10 and 15-20 are the subject matter of this appeal.

IV. STATUS OF AMENDMENTS

An amendment has been submitted after the final rejection mailed August 7, 2006. The amendment was not entered.

Appellant is filing a concurrent amendment with this Brief canceling claims 11-14 without prejudice.

V. SUMMARY OF CLAIMED SUBJECT MATTER

This Appeal is taken from claims 1-10 and 15-20, of which claims 1, 7, and 15 are independent.

With respect to claim 1, the present invention recited therein relates to a method for delivering enhanced content to a set-top box including receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available; establishing a communication link between a server and said set-top box; receiving instructions at the set-top box for identifying a type of said set-top box; forming a request for said enhanced content from said server based on the type of set-top box; and receiving enhanced content at said set-top box for generation of an enhanced display. Support for the claimed features can be found at least on e.g., Figures 5 and 6, page 7, lines 27-32 to page 8, lines 1-7 and page 9, lines 14-31 to page 10, lines 1-12 of the specification.

Claims 2-6 depend from independent claim 1. Claims 2-6 describe additional features of the system of independent claim 1, including, for example, features relating to said request sent by the set-top box requesting specific type content only, features relating to the trigger being located in a vertical blanking interval of the video signal input, features relating to the trigger being a command string written in Advanced Television Enhancement Forum compliant code, and features relating to the communication link being Hyper Text Transfer Protocol. Claims 2-6 are supported at least by page 3, lines 8-30 of the specification.

With respect to claim 7, the present invention recited therein relates to a method for delivering enhanced content to a set-top box comprising receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available; establishing a communication link between a server and said set-top box; sending a signal from said set-top box to said server through said communication link; decoding a signal header at said server; based on the decoded signal header, establishing said set-top box type; transmitting said enhanced content corresponding to said type of said set-top box; and receiving the enhanced data content by at said set-top box for generation of an enhanced display. Support for the claimed features can be found at least on e.g., Figures 7 and 8, page 7, lines 27-32 to page 8, lines 1-7 and page 10, lines 18-31 to page 11, lines 1-30 of the specification.

Claims 8-10 depend from independent claim 7. Claims 8-10 describe additional features of the system of independent claim 7, including, for example, features relating to the trigger being located in a vertical blanking interval of the video signal input, features relating to the trigger being a command string written in Advanced Television Enhancement Forum compliant code, and features relating to the communication link being Hyper Text Transfer Protocol. Claims 8-10 are supported at least by page 4, lines 1-6 of the specification.

With respect to claim 15, the present invention recited therein relates to a system for delivering enhanced content to a set-top box comprising a set-top box that receives a trigger encoded in a video signal indicating that enhanced content is available, and, in response to said trigger, sends to send a signal containing header information conveying type and location information of said set-top box; and a server that receives said signal and responds to said signal by transmitting enhanced content to said set-top box; and wherein said set-top box is to receive said enhanced content and generates an enhanced display. Support for the claimed

features can be found at least on e.g., Figures 5 and 6, page 7, lines 27-32 to page 8, lines 1-7 and page 9, lines 14-31 to page 10, lines 1-12 of the specification.

Claims 16-20 depend from independent claim 15. Claims 16-20 describe additional features of the system of independent claim 15, including, for example, features relating to the trigger being located in a vertical blanking interval of the video signal input, features relating to the trigger being a command string written in Advanced Television Enhancement Forum compliant code, and features relating to the communication link being Hyper Text Transfer Protocol. Claims 16-20 are supported at least by page 3, lines 8-30 and page 4, lines 1-6 of the specification.

VI. GROUNDS OF REJECTION

Appellants respectfully request the Board to reverse the following ground of rejection:

Rejection of claims 1-20 under 35 U.S.C. §103(a) as being unpatentable for obviousness over U.S. Application Publication No. 2002/0056129 to Blackketter et al. (hereinafter "Blackketter") in view of U.S. Patent No. 6,668,378 to Leak et al. (hereinafter "Leak").

VII. ARGUMENTS

35 U.S.C. § 103 imposes the requirement that an invention, to be patentable, must not have been obvious over the prior art "at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." A proper prima facie showing of obviousness requires the U.S. Patent and Trademark Office ("PTO") to satisfy three requirements. First, the prior art itself must suggest the desirability and, therefore, obviousness of a modification of a reference or the combination of references to achieve a claimed invention. *See Hodosh v. Block Drug Co.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984); *see also In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Second, the PTO must show that, at the time the invention was made, the proposed modification had a reasonable expectation of success. *See Amgen v. Chugai Pharm. Co.*, 927 F.2d 1200, 1209, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991). Finally, the combination of

references must teach or suggest each and every limitation of the claimed invention. *See In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Further, the question of obviousness should be analyzed in light of the holding of *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966) which sets forth the following factors for determining obviousness: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) such objective evidence of non-obviousness as commercial success, long felt but unresolved needs, and failure of others. All evidence must be weighed before reaching a conclusion on obviousness under § 103. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1564, 1 USPQ2d 1593, 1594 (Fed. Cir. 1987); *Hodosh v. Block Drug*, 786 F.2d at 1143, 229 USPQ at 187-88.

The rejection of claims 1-10 and 15-20 under 35 U.S.C. § 103(a), as unpatentable over Blackketter in view of Leak, should be REVERSED.

With regard to the §103(a) rejection of claims 1-10 and 15-20 over Blackketter in view of Leak, Applicant respectfully disagrees with the Examiner's assertion of obviousness. This rejection is respectfully traversed and reversal of the Examiner's position with respect thereto is solicited in that the Blackketter reference and the Leak reference cited by the Examiner neither disclose nor suggest that which is presently set forth by Appellants' claimed invention.

The Examiner states that Blackketter teaches "[a] method for delivering enhanced content to a set-top box; receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available". The Examiner acknowledges that "Blackketter does not disclose the steps of "establishing", "receiving [instructions]", or "forming"". The Examiner next states that "Leak teaches establishing a communication link between a server and said set-top box; receiving instructions at the set-top box for identifying a type of set-top box; forming a request for said enhanced content; and receiving enhanced content at said set-top box for generation of an enhanced display". See Office Action, June 13, 2006, page 3. However, the Examiner fails to address all features of the invention as claimed in independent claim 1.

Independent claim 1 (emphasis added) recites:

A method for delivering enhanced content to a set-top box:
receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available;
establishing a communication link between a server and said set-top box;
receiving instructions at the set-top box **for identifying a type of said set-top box;**
forming a request for said enhanced content from said server **based on the type of set-top box;** and
receiving enhanced content at said set-top box for generation of an enhanced display.

Claim 1 recites receiving instructions at the set-top box for identifying a type of set-top box; and forming a request for enhanced content from the server based on the type of set-top box. By determining the type of set-top box, the proper content may be delivered to each set-top box and the content may be correctly utilized by the set-top box.

The Examiner has not asserted a reference that discloses these claimed features; thus, the Examiner fails to provide support for a *prima facie* case of obviousness of claim 1.

Appellant asserts that the Blackketter reference and the Leak reference fail to disclose the claimed features of the invention, including receiving instructions at the set-top box for identifying a type of set-top box; and forming a request for enhanced content from the server based on the type of set-top box.

Blackketter discloses a television trigger that indicates a future time when the trigger is to be executed. Blackketter addresses a problem of the prior art where triggers that are to be executed at a future time are sent with a delay program, which will run at device-specific times instead of a uniform time. Thus, Blackketter sends a trigger with a time-stamp for the future event. Additionally, multiple triggers may be sent so that if a user is not tuned to the channel before the trigger is to be executed, another trigger sent simultaneously or immediately before the execution time is also sent.

Thus, Blackketter does not teach "receiving instructions at the set-top box for identifying a type of set-top box", as is recited in independent claim 1. In Blackketter, the receiver receives one or more triggers that are to be executed in the future. The future triggers do not determine the type of set-top box, and indeed are intended to be device-independent, using a time-stamp rather than a delay program which may run differently on different devices.

Additionally, Blackketter does not teach “forming a request for enhanced content from the server based on the type of set-top box”, as is recited in independent claim 1. In Blackketter, receivers download information from a server, either before the information is needed, i.e., prefetching, or when the information is needed. Blackketter does not teach a separate request to the server for each type of receiver. By contrast, in independent claim 1, the set-top box requests enhanced content from the server after identifying the type of set-top box.

Leak discloses a system wherein two triggers are sent either simultaneously or staggered in time from a satellite to receivers. Leak addresses a problem of the prior art where some receivers are internet-equipped and some are not. In the prior art, the non-internet-equipped receivers were prone to errors resulting from trying to display enhanced content requiring an internet connection. Thus, Leak discloses sending separate triggers having separate content for connected receivers and separate content for disconnected receivers. In Leak, each receiver receives both triggers but only executes the trigger having the content that matches the receiver’s connectivity. Alternatively, in Leak, a first trigger is sent to all receivers but only executed by the connected receivers, and then a second trigger is sent to all receivers and executed by all receivers.

Thus, Leak does not teach “receiving instructions at the set-top box for identifying a type of set-top box”, as is recited in independent claim 1. In Leak, the receiver determines which trigger to execute depending upon the receivers’ internet connectivity. The receiver does not need to identify the type of receiver, because the receiver receives every trigger and then decides which triggers to execute. By contrast, in independent claim 1, the server determines the type of set-top box.

Additionally, Leak does not teach “forming a request for enhanced content from the server based on the type of set-top box”, as is recited in independent claim 1. In Leak, connected receivers can download information from a server and disconnected receivers cannot download information. Leak does not teach a separate request to the server for each type of receiver. By contrast, in independent claim 1, the set-top box requests enhanced content from the server after identifying the type of set-top box.

Thus, neither Blackketter nor Leak teach or suggest each and every step of the method as recited in independent claim 1. Therefore, independent claim 1 is patentable over Blackketter and Leak.

For the same reasons set forth above in relation to the 35 U.S.C. § 103(a) rejection of independent claim 1, dependent claims 2-6 are also patentable over Blackketter and Leak.

Similarly, independent claim 7 (emphasis added) recites:

A method for delivering enhanced content to a set-top box comprising:
receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available;
establishing a communication link between a server and said set-top box;
sending a signal from said set-top box to said server through said communication link;
decoding a signal header at said server;
based on the decoded signal header, establishing said set-top box type;
transmitting said enhanced content corresponding to said type of said set-top box; and
receiving the enhanced data content by at said set-top box for generation of an enhanced display.

Claim 7 recites decoding a signal header at a server; based on the decoded signal header, establishing a set-top box type; and transmitting enhanced content corresponding to the type of the set-top box. Prior art of record does not disclose these claimed features; thus, the Examiner fails to provide support for a *prima facie* case of obviousness of claim 7.

As above, Appellant asserts that the Blackketter reference and the Leak reference fail to disclose the claimed features of the invention, including decoding a signal header at a server; based on the decoded signal header, establishing a set-top box type; and transmitting enhanced content corresponding to the type of the set-top box.

Blackketter does not teach “decoding a signal header at a server; based on the decoded signal header, establishing a set-top box type”, as is recited in independent claim 7. In Blackketter, the server does not determine which receiver receives each trigger; rather each receiver receives all triggers and executes all triggers. By contrast, in independent claim 7, the server determines the type of set-top box.

Additionally, Blackketter does not teach “transmitting enhanced content corresponding to the type of the set-top box”, as is recited in independent claim 7. In

Blackketter, connected receivers download information from a server, either before the information is needed, i.e., prefetching, or when the information is needed. Blackketter does not teach different enhanced content for different types of receivers. By contrast, in independent claim 7, the server transmits content to set-top boxes according to the type of set-top box.

Leak does not teach “decoding a signal header at a server; based on the decoded signal header, establishing a set-top box type”, as is recited in independent claim 7. In Leak, the server does not determine which receiver receives each trigger; rather each receiver receives all triggers and only executes those triggers that correspond to the receivers’ internet connectivity. By contrast, in independent claim 7, the server determines the type of set-top box.

Additionally, Leak does not teach “transmitting enhanced content corresponding to the type of the set-top box”, as is recited in independent claim 7. In Leak, connected receivers can download information from a server and disconnected receivers cannot download information. Leak does not teach different enhanced content for different types of receivers. By contrast, in independent claim 7, the server transmits content to set-top boxes according to the type of set-top box.

Thus, neither Blackketter nor Leak teach or suggest each and every step of the method as recited in independent claim 7. Therefore, independent claim 7 is patentable over Blackketter and Leak.

For the same reasons set forth above in relation to the 35 U.S.C. § 103(a) rejection of independent claim 7, dependent claims 8-10 are also patentable over Blackketter and Leak.

Similarly, independent claim 15 (emphasis added) recites:

A system for delivering enhanced content to a set-top box comprising:

a set-top box that receives a trigger encoded in a video signal indicating that enhanced content is available, and **in response to said trigger sends a signal containing header information conveying type and location information of said set-top box;**

a server that receives said signal and responds to said signal by transmitting enhanced content to said set-top box;

wherein said a set-top box receives said enhanced content and generates an enhanced display.

Claim 15 recites a set-top box that, in response to a trigger sends a signal containing header information conveying type and location information of a set-top box. The Examiner has not asserted a reference that discloses these claimed features; thus, the Examiner fails to provide support for a *prima facie* case of obviousness of claim 15.

As above, Appellant asserts that the Blackketter reference and the Leak reference fail to disclose the claimed features of the invention, including a set-top box that, in response to a trigger sends a signal containing header information conveying type and location information of a set-top box.

Blackketter does not teach “a set-top box that, ... in response to a trigger sends a signal containing header information conveying type and location information of a set-top box”, as is recited in independent claim 15. In Blackketter, the receiver does not communicate to the server the internet connectivity of the receiver; rather each receiver receives all triggers and executes all triggers. By contrast, in independent claim 15, the set-top box sends a signal to the server indicating the type of set-top box.

Leak does not teach “a set-top box that, ... in response to a trigger sends a signal containing header information conveying type and location information of a set-top box”, as is recited in independent claim 15. In Leak, the receiver does not communicate to the server the internet connectivity of the receiver; rather each receiver receives all triggers and only executes those triggers that correspond to the receivers’ internet connectivity. By contrast, in independent claim 15, the set-top box sends a signal to the server indicating the type of set-top box.

Thus, neither Blackketter nor Leak teach or suggest each and every step of the system as recited in independent claim 15. Therefore, independent claim 15 is patentable over Blackketter and Leak.

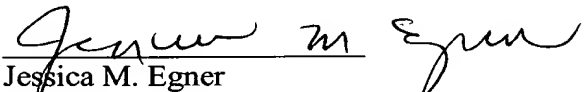
For the same reasons set forth above in relation to the 35 U.S.C. § 103(a) rejection of independent claim 15, dependent claims 16-20 are also patentable over Blackketter and Leak.

Conclusion

Since the Examiner's final rejection under 35 U.S.C. § 103(a) is inappropriate for the reasons set forth above, Appellant respectfully requests the Board to reverse each ground of the rejections.

Respectfully submitted,
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Date: 1-16-07


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VIII. CLAIM APPENDIX

Claims Involved in the Appeal

1. A method for delivering enhanced content to a set-top box:
receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available;
establishing a communication link between a server and said set-top box;
receiving instructions at the set-top box for identifying a type of said set-top box;
forming a request for said enhanced content from said server based on the type of set-top box; and
receiving enhanced content at said set-top box for generation of an enhanced display.
2. The method of claim 1 wherein the said request sent by the set-top box requests specific type content only.
3. The method of claim 1 wherein the server responds to said request set by said set-top box and said server establishes an identity of said set-top box and only transmits enhanced content specific to that type of said set-top box.
4. The method of claim 1 wherein said trigger is located in a vertical blanking interval of the video signal input.
5. The method of claim 1 wherein said trigger is a command string written in Advanced Television Enhancement Forum compliant code.
6. The method of claim 1 wherein said communication link is Hyper Text Transfer Protocol.
7. A method for delivering enhanced content to a set-top box comprising:
receiving a trigger included in a video signal input at said set-top box for indicating that enhanced content is available;
establishing a communication link between a server and said set-top box;
sending a signal from said set-top box to said server through said communication link;

decoding a signal header at said server;
based on the decoded signal header, establishing said set-top box type;
transmitting said enhanced content corresponding to said type of said set-top box; and
receiving the enhanced data content by at said set-top box for generation of an
enhanced display.

8. The method of claim 7 wherein said trigger is located in the vertical blanking interval of the video signal input.

9. The method of claim 7 wherein said trigger is a command string written in Advanced Television Enhancement Forum compliant code.

10. The method of claim 7 wherein said communication link is Hyper Text Transfer Protocol.

11.-14. Canceled

15. A system for delivering enhanced content to a set-top box comprising:
a set-top box that receives a trigger encoded in a video signal indicating that enhanced content is available, and in response to said trigger sends a signal containing header information conveying type and location information of said set-top box;
a server that receives said signal and responds to said signal by transmitting enhanced content to said set-top box;
wherein said a set-top box receives said enhanced content and generates an enhanced display.

16. The system of claim 15 wherein the said signal sent by the set-top box requests a specific type of content only.

17. The system of claim 15 wherein the server responds to said signal from said set-top box and only transmits enhanced content specific to that type of said set-top box.

18. The system of claim 15 wherein said trigger is located in a vertical blanking interval of the video signal input.

19. The system of claim 15 wherein said trigger is a command string written in Advanced Television Enhancement Forum compliant code.

20. The system of claim 15 wherein said communication link is Hyper Text Transfer Protocol.

XI. EVIDENCE APPENDIX

There is no additional evidence relied upon in this brief.

X. RELATED PROCEEDINGS APPENDIX

There are no related appeals or interferences.